

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GENEVA RUSSELL, :
 :
Plaintiff, : Case No. 3:18cv264
 :
vs. : JUDGE WALTER H. RICE
 :
COMMISSIONER OF SOCIAL SECURITY, :
 :
Defendant. :

DECISION AND ENTRY ADOPTING IN PART AND REJECTING IN PART
REPORT AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE
JUDGE (DOC. #14); DEFENDANT'S OBJECTIONS TO SAID JUDICIAL FILING
(DOC. #16) SUSTAINED IN PART AND OVERRULED IN PART; JUDGMENT
TO ENTER IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT HEREIN,
REVERSING THE COMMISSIONER'S DECISION THAT PLAINTIFF WAS NOT
DISABLED AND, THEREFORE, NOT ENTITLED TO BENEFITS UNDER THE
SOCIAL SECURITY ACT, AND REMANDING THE CAPTIONED CAUSE TO
THE DEFENDANT COMMISSIONER PURSUANT TO 42 U.S.C. § 405(g) FOR
FURTHER ADMINISTRATIVE PROCEEDINGS SET FORTH IN THIS OPINION;
TERMINATION ENTRY

Plaintiff has brought this action pursuant to 42 U.S.C. § 405(g) to review a decision of the
Defendant Commissioner denying Plaintiff's application for Social Security disability benefits.
On June 18, 2019, the United States Magistrate Judge filed a Report and Recommendations (Doc.
#14), recommending that the Commissioner's decision that Plaintiff was not disabled and,
therefore, not entitled to benefits under the Social Security Act be reversed and that the captioned

cause be remanded to the Defendant Commissioner for the immediate payment of benefits under the Social Security Act.¹

Both parties agree that the Administrative Law Judge contains reversible error, particularly as to the evaluation of Plaintiff's two treating medical sources' opinions. Pursuant to the reasoning and citations of authority set forth in the Defendant's Objections to said judicial filing (Doc. #16), and, further, based upon a thorough de novo review of this Court's file, including the Administrative Transcript (Doc. #6), and a thorough review of the applicable law, this Court adopts the aforesaid Report and Recommendations in part and rejects same in part, concluding that the Commissioner's decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social Security Act, was not supported by substantial evidence, given that the Administrative Law Judge erred in her evaluation of the Plaintiff's two treating medical sources. Additionally, this Court rejects the Report and Recommendations of the United States Magistrate Judge, to the extent that she recommends a remand, pursuant to Sentence Four of 42 U.S.C. § 405(g), for an immediate award of benefits. Rather, the captioned cause must be remanded for further administrative proceedings, to wit: a proper consideration of the evaluation of Plaintiff's two treating medical sources and, accordingly, a proper statement of Plaintiff's residual functional capacity, with the Plaintiff's two treating physician's opinions properly evaluated. In short, until the Defendant Commissioner properly evaluates the opinions of Plaintiff's two treating sources, neither the Magistrate Judge nor this Court, should an appeal to the District Judge be needed, can properly evaluate whether the record contains overwhelming evidence of disability or, phrased alternatively, whether the evidence is strong while contrary evidence is lacking in substance.

¹ In actuality, the Magistrate Judge's decision recommended the granting in part and overruling in part the Commissioner's unilateral motion to reverse, enter judgment and remand for further proceedings.

In reviewing the Commissioner's decision, the Magistrate Judge's task is to determine if that decision is supported by "substantial evidence." 42 U.S.C. § 405(g). Under 28 U.S.C. § 636(b)(1)(C), this Court, upon objections being made to the Magistrate Judge's Report and Recommendations, is required to make a de novo review of those recommendations of the report to which objection is made. This de novo review, in turn, requires this Court to re-examine all the relevant evidence, previously reviewed by the Magistrate Judge, to determine whether the findings of the Secretary [now Commissioner] are supported by "substantial evidence." Lashley v. Secretary of Health and Human Services, 708 F.2d 1048, 1053 (6th Cir. 1983); Gibson v. Secretary of Health, Education and Welfare, 678 F.2d 653, 654 (6th Cir. 1982). This Court's sole function is to determine whether the record as a whole contains substantial evidence to support the Commissioner's decision. The Commissioner's findings must be affirmed if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971), citing Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed.2d 126 (1938); Landsaw v. Secretary of Health and Human Services, 803 F.2d 211, 213 (6th Cir. 1986). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson, *supra*, at 401. Ellis v. Schweicker, 739 F.2d 245, 248 (6th Cir. 1984). Substantial evidence is more than a scintilla, but only so much as would be required to prevent a directed verdict (now judgment as a matter of law) against the Commissioner if this case were being tried to a jury. Foster v. Bowen, 853 F.2d 483, 486 (6th Cir. 1988); NLRB v. Columbian Enameling and Stamping Company, 306 U.S. 292, 300 (1939). To be substantial, the evidence "must do more than create a suspicion of the existence of the fact to be established... [I]t

must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.” LeMaster v. Secretary of Health and Human Services, 802 F.2d 839, 840 (6th Cir. 1986), quoting NLRB v. Columbian Enameling and Stamping Company, *supra*.

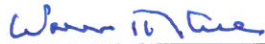
In determining whether the Commissioner’s findings are supported by substantial evidence, the Court must consider the record as a whole. Hephner v. Mathews, 574 F.2d 359 (6th Cir. 1978); Ellis, *supra*; Kirk v. Secretary of Health and Human Services, 667 F.2d 524, 536 (6th Cir. 1984); Houston v. Secretary of Health and Human Services, 736 F.2d 365 (6th Cir. 1984); Garner v. Heckler, 745 F.2d 383 (6th Cir. 1984). However, the Court may not try the case *de novo*, resolve conflicts in evidence or decide questions of credibility. Garner, *supra*. The findings of the Commissioner of Social Security and proceedings on Claimant’s application for social security disability benefits are not subject to reversal merely because there exists in the record substantial evidence to support a different conclusion. Buxton v. Halter, Commissioner of Social Security, 246 F.3d 762 (6th Cir. 2001). If the Commissioner’s decision is supported by substantial evidence, it must be affirmed. even if the Court as a trier of fact would have arrived at a different conclusion. Elkins v. Secretary of Health and Human Services, 658 F.2d 437, 439 (6th Cir. 1981).

WHEREFORE, based upon the aforesaid, this Court adopts in part and rejects in part the Report and Recommendations of the United States Magistrate Judge (Doc. #14), and overrules the Defendant’s Objections in part and sustains same in part. Judgment is ordered entered in favor of the Plaintiff and against the Defendant Commissioner, vacating and reversing the Commissioner’s decision that Plaintiff was not disabled and, therefore, not entitled to benefits under the Social

Security Act and remanding the captioned cause to the Defendant Commissioner, pursuant to Sentence Four of 42 U.S.C. § 405(g), for further administrative proceedings consistent with this opinion.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

September 30, 2019



WALTER H. RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of record